



# Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE HONOLULU LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

RANDALL B. LOWE  
DIRECT (202) 508-6621  
randyloew@dwt.com

SUITE 450  
1500 K STREET NW  
WASHINGTON, D.C. 20005-1272

TEL (202) 508-6600  
FAX (202) 508-6699  
www.dwt.com

December 13, 2002

**By ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
TW-B204  
Washington, DC 20554

Re: **Ex parte - WC Docket No. 02-314: Application of Qwest Communications International, Inc. to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming**

Dear Ms. Dortch:

On December 6, 2002, Touch America filed a letter in this matter whereby it demonstrated that not only should the Commission appreciate the gravity of Qwest's December 3<sup>rd</sup> letter but that it must consider other proceedings before the Commission regarding Qwest's illicit activities that bear on this proceeding. As a further demonstration of that required consideration, attached is a letter filed on December 11, 2002 by Touch America in File Nos. EB-02-MD-003 and EB-02-MD-004 that calls into question the credibility of Qwest's assertions of 271 compliance based on Qwest's history, particularly with respect to the 271 compliance audits that are being undertaken by the Enforcement Bureau's Investigations and Hearing Division.

For instance, in Qwest's letter from Sharon Devine dated December 3, 2002, she states that Qwest uncovered the 271 violations as part of an internal audit conducted "in anticipation" of the 2003 annual 271- compliance audit. As pointed out in Touch America's December 11<sup>th</sup> letter, however, the two prior compliance audits failed to reveal these newly-disclosed violations thereby raising questions as to the efficacy of the process and, once again, Qwest's internal controls. This issue clearly is relevant and material to the merits of this proceeding. As another

example, Touch America's December 11<sup>th</sup> letter shows that Qwest has been selective in determining when to disclose violations and what violations to disclose thereby calling into question the timing of these disclosures in the context of the 271 process and – more importantly – what uncovered violations Qwest is waiting to reveal after it obtains 271 authority.

If nothing else, the December 11<sup>th</sup> letter demonstrates that further investigation is warranted into Qwest's 271 compliance (or non-compliance) given the record being developed in the various enforcement actions pending before the Commission and, further, that Qwest's assertions of 271 compliance carry very little, if any, weight and should be soundly ignored in favor of such an investigation.

Respectfully submitted,

Davis Wright Tremaine LLP

/s/

Randall B. Lowe  
Counsel for Touch America, Inc.

cc: Chairman Powell (by hand)  
Commissioner Abernathy (by hand)  
Commissioner Copps (by hand)  
Commissioner Martin (by hand)  
J. Mago (by hand)  
C. Libertelli (by hand)  
M. Brill (by hand)  
J. Goldstein (by hand)  
S. Feder (by hand)  
J. Myles (by e-mail)  
M. Carowitz (by e-mail)  
G. Remondino (by e-mail and hand)  
R. Harsh (by e-mail)  
J. Jewell (by e-mail)  
P. Baker (by e-mail)  
C. Post (by e-mail)  
P. Fahn (by e-mail)  
B. Smith (by e-mail)  
S. Vick (by e-mail)  
S. Oxley (by e-mail)  
Y. Dori (by facsimile)  
Peter Rohrbach (by e-mail)  
WUTC Records (by e-mail)  
Qualex International (by hand)